



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Carol Laham, Esq.
Wiley Rein LLP
1776 K Street, N.W.
Washington, D.C. 20006

AUG 15 2007

RE: MUR 5881
Citizens Club for Growth, Inc. PAC and
Pat Toomey, in his official capacity as treasurer
Citizens Club for Growth, Inc.
Bruce Bent
Robert Lansing
Virginia Manheimer
William T. Wolf
Betty Wolfe

Dear Ms. Laham:

On November 21, 2006, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). On August 8, 2007, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Citizens Club for Growth, Inc. PAC and Pat Toomey, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f). The Commission also found no reason to believe that Citizens Club for Growth, Inc. violated the Act in connection with this matter. Finally, the Commission found no reason to believe that Bruce Bent, Robert Lansing, Virginia Manheimer, William T. Wolf or Betty Wolfe violated 2 U.S.C. § 441a(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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If you have any questions, please contact Mark Allen, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Cynthia E. Tompkins
Cynthia E. Tompkins
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 5881**

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5
6
7 **Respondents:** Walberg for Congress and Jeffrey A. Yeutter, in his official capacity as treasurer
8 Citizens Club for Growth, Inc.
9 Citizens Club for Growth, Inc. PAC¹ and Pat Toomey, in his official capacity
10 as treasurer
11 Bruce Bent
12 Robert Lansing
13 David MacNeil
14 Virginia Manheimer
15 Lester Weindling
16 William T. Wolf
17 Betty Wolfe
18

19 **I. INTRODUCTION**

20
21 This matter was generated by a complaint filed with the Federal Election Commission by
22 Matt Marsden on behalf of Schwarz for Congress. *See* 2 U.S.C. § 437g(a)(1). The complaint
23 alleges that seven named individuals made excessive contributions to Club for Growth, Inc. PAC
24 (“CFG-PAC”) and that CFG-PAC knowingly accepted these excessive funds. The complaint
25 also alleges that these seven contributors were among approximately 250 contributors who gave
26 to both CFG-PAC and to Walberg for Congress (“WFC”) and who knew that a substantial
27 portion of their contributions to CFG-PAC would be used to support WFC in the 2006 primary
28 election. According to the complaint, each of these 250 contributors’ aggregate contributions to
29 CFG-PAC and WFC were thereby subject to a \$2,100 per-election contribution limit. *See*
30 11 C.F.R. § 110.1(h). As a result, the complaint alleges, these contributors made excessive
31 contributions totaling \$540,726 to WFC in connection with the 2006 primary election.

¹ On April 3, 2007, Citizens Club for Growth, Inc and Citizens Club for Growth, Inc PAC notified the Commission in this matter of their name changes from Club for Growth, Inc and Club for Growth, Inc PAC

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Based on available information discussed below, including information provided by Respondents, the Commission has determined that there is no reason to believe that Respondents violated the Federal Election Campaign Act of 1971, as amended, ("the Act").²

II. ANALYSIS

A. Alleged Excessive Contributions to CFG-PAC

The complaint alleges that Bruce Bent, Robert Lansing, David MacNeil, Virginia Manheimer, Lester Weindling, William T. Wolf and Betty Wolfe each exceeded the \$5,000 annual limit applicable to their contributions to CFG-PAC during 2006. *See* 2 U.S.C. § 441a(a)(1)(C).³

The six individual contributors who responded to the complaint each asserted that they gave \$5,000 to CFG-PAC during 2006,⁴ within the contribution limit, and that their additional contributions that the complaint alleged constituted excessive contributions to CFG-PAC were in fact earmarked contributions made through CFG-PAC to candidate committees including WFC. CFG-PAC similarly responded that it received \$5,000 from each of the seven individual respondent contributors, and that their other contributions cited in the complaint were in fact properly reported and transmitted earmarked candidate contributions. CFG-PAC Resp. at 4.⁵

² In addition to alleging violations of the Act, the complaint asks the Commission to commence a civil action against CFG-PAC and WFC seeking an injunction to preclude them from engaging in future conduct that violates the Act. Complaint at 7. The Act provides that the Commission may seek civil actions for relief, including injunctive relief, at the end of the administrative process. *See* 2 U.S.C. § 437g(a)(6). Because the Commission finds no reason to believe in this matter, it is unnecessary to address the request for injunctive relief.

³ The complaint listed their purported contributions in a spreadsheet. Complaint Exhibit ("Exh ") 4.

⁴ The seventh individual contributor, Lester Weindling, did not respond to the complaint.

⁵ CFG-PAC misnumbered the pages of its response. The cited pages reflect the order of the pages, not the page numbers that appear in the headers.

27044183486

1 CFG-PAC added that none of the earmarked contributions were written to or deposited by CFG-
2 PAC. *Id.* at 3.

3 The disclosure reports of CFG-PAC and WFC confirm that the seven individual
4 contributors all gave the \$5,000 maximum to CFG-PAC during 2006. *See* 2 U.S.C.
5 § 441a(a)(1)(C). Their additional contributions were in fact earmarked contributions to candidate
6 committees such as WFC. Such contributions are subject to the limit for the individuals'
7 contributions to those candidate committees and do not count against the individuals' limit for
8 giving to CFG-PAC. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(8).⁶ Accordingly, the
9 Commission finds no reason to believe that Bruce Bent, Robert Lansing, David MacNeil,
10 Virginia Manheimer, Lester Weindling, William T. Wolf or Betty Wolfe violated 2 U.S.C.
11 § 441a(a).

12 B. Allegation that Contributors Knew that CFG-PAC Would Use Substantial
13 Portions of their Contributions to Support Walberg for Congress
14

15 The complaint alleges that some 250 contributors gave to both CFG-PAC and WFC,
16 resulting in excessive contributions to both committees.⁷ The Commission's regulations permit
17 an individual to contribute to a candidate or his or her authorized committee with respect to a
18 particular election and also contribute to a political committee which has supported, or
19 anticipates supporting, the same candidate in the same election without aggregation, as long as
20 (1) the political committee is not the candidate's principal campaign committee or other
21 authorized political committee or a single candidate committee; (2) the contributor does not give

⁶ The individuals' contributions to the candidates were within the \$2,100 per election contribution limit applicable during the 2006 election cycle

⁷ These contributors, including the seven named contributors discussed above, are listed with their purported contributions in the spreadsheet provided with the complaint Complaint Exh 4

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1 with the knowledge that a substantial portion will be contributed to, or expended on behalf of,
2 that candidate for the same election; and (3) the contributor does not retain control over the
3 funds. 11 C.F.R. § 110.1(h)(1)-(3). This section governs the circumstances under which
4 contributions to a candidate and his or her authorized campaign committee must be aggregated
5 with contributions to other political committees for purposes of the contribution limits to the
6 candidate. *See Explanation and Justification of 11 C.F.R. § 110.1(h)*, 52 Fed. Reg. 44,130
7 (January 9, 1987). The complaint alleges that individuals contributed to CFG-PAC with the
8 knowledge that their contributions would be used to support WFC. *See* 11 C.F.R. § 110.1(h)(2).
9 Thus, according to the complainant, contributors' aggregate contributions to CFG-PAC and to
10 WFC were subject to the \$2,100 limit for contributions to WFC in connection with the 2006
11 primary election. *See* 2 U.S.C. § 441a(a)(1)(A).

12 The complaint provided two documents and other information in support of its allegation
13 that contributors to CFG-PAC and to WFC knew that their contributions to the former would be
14 used to support the latter.⁸ The first document is a five-page solicitation on CFG letterhead from
15 CFG president Pat Toomey and executive director David Keating, titled "Replacing Two RINO
16 Incumbents with Pro-Growth-Republicans."⁹ Complaint Exh. 2. The solicitation, dated
17 February 17, 2006, promotes Tim Walberg and Steve Laffey, a candidate for U.S. Senate from
18 Rhode Island, in their respective primary elections, criticizes their opponents, and solicits
19 earmarked contributions on behalf of Walberg and Laffey. After asking readers to make their

20

⁸ The complaint further supports its allegations by referring to Club for Growth's website contribution page. The complaint, does not provide a copy, however, and this page is no longer available

⁹ The "To." field is blank in the copy of the solicitation attached to the complaint. The solicitation contains a disclaimer that it was paid for by CFG-PAC and not authorized by any candidate or candidate's committee.

1 “maximum possible contribution to Tim’s campaign today,” the solicitation turns to a discussion
2 regarding CFG-PAC, titled “The Club for Growth PAC – An Essential Component of our
3 Strategy.” Exh. 2 at 4. This section of the solicitation begins with a criticism of “the McCain-
4 Feingold law” for limiting CFG’s ability to run television and radio advertisements that mention
5 candidate names within 30 days and 60 days of primary and general elections, respectively.

6 According to the solicitation, the “way out” is to support CFG-PAC:

7 ... Contributions to the Club for Growth PAC can be used not only to mention the name
8 of a candidate, but tell the voters to vote for or against him.

9
10 And that’s exactly what we’ll do – in race after race, state after state.

11
12 Last year, we set a fundraising record for the Club’s PAC. We’re currently building up a
13 war chest to use against the very worst candidates and in support of the very best.

14
15 In 2004, TV and radio ads by the Club for Growth PAC proved effective in race after
16 race. We will not stand by and watch great candidates lack the means to get their pro-
17 growth message to the voters. And we cannot allow horrible candidates to mislead voters
18 without challenge.

19
20 Please make your contribution to the Club’s PAC today so we can continue speaking out.

21
22 Exh. 2 at 4. The final page of the solicitation is a contribution page titled “Replace Chafee with
23 Laffey, Replace Schwarz with Walberg, and Build the Club for Growth PAC.” *Id.* at 5. The text
24 of the page reads:

25 Let’s do all we can to help turn around the Congress and replace economic liberals Sen.
26 Lincoln Chafee and Rep. Joe Schwarz with Republicans Steve Laffey and Tim Walberg.
27 (Please write your checks to each campaign, not the Club for Growth.) Here is my
28 contribution of:

29
30 Elect Laffey (RI) ___\$100 ___\$150 ___\$200 \$___(\$2,100 maximum)
31 Walberg for Congress (MI) ___\$100 ___\$150 ___\$200 \$___(\$2,100 maximum)
32

33 I agree that we must speak out about candidates within the closing weeks of an election.
34 Here is my contribution to the Club for Growth PAC of:
35

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1 __\$100 __\$150 __\$200 \$____ (\$5,000 maximum)
2
3

4 The second document provided with the complaint is a two-page e-mail from Pat
5 Toomey, titled "Club Members Take Down Incumbent!"¹⁰ Complaint Exh. 3. The e-mail, dated
6 August 9, 2006, states that "Club for Growth members provided the funds to fuel Club for
7 Growth PAC's first-ever primary victory against an incumbent when challenger Tim Walberg
8 defeated Representative Joe Schwarz last night in Michigan's seventh district." *Id.* at 1. The
9 section of the e-mail specifying CFG-PAC's support of Walberg reads:

10 Club members donated over \$600,000 to Walberg's campaign and the Club for Growth
11 PAC spent over \$500,000 in independent expenditures including hard-hitting TV and
12 radio ads that underscored Joe Schwarz's liberal record on economic issues.
13

14 This race showed the power of Club for Growth members acting together.
15

16 *Id.*

17 Finally, the complaint cites CFG-PAC's purported overall support of WFC: that 37% of
18 CFG-PAC's overall expenditures – \$514,211 – during the 2006 election cycle through the
19 August 8, 2006 primary election was spent to support Tim Walberg or oppose Representative
20 Schwarz. According to the complaint, as of August 2006, 86% of the financial backing received
21 by WFC came directly or indirectly from CFG-PAC.

22 Respondents Bruce Bent, Robert Lansing, Virginia Manheimer, William T. Wolf and
23 Betty Wolfe filed nearly identical affidavits stating that when they made their contributions to
24 CFG-PAC during 2006, they "did not know how Club for Growth, Inc. PAC might use the funds
25

¹⁰ The e-mail contains a disclaimer that it was paid for by CFG-PAC and not authorized by any candidate or candidate's committee.

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1 contributed other than to support conservative candidates generally.” Bent Affidavit (“Aff.”) ¶3;
2 Lansing Aff. ¶4; Manheimer Aff. ¶3; Wolf Aff. ¶3; Wolfe Aff. ¶4. David MacNeil denied that
3 he “had actual knowledge that the Club for Growth PAC would make substantial contributions to
4 the Walberg for Congress campaign.” MacNeil Aff. ¶3.

5 CFG-PAC responded that when it solicits contributions, it does not inform contributors as
6 to how their contributions will be used, other than to support candidates generally. CFG-PAC
7 Resp. at 5 and Affidavit of David Keating (“Keating Aff.”) ¶11. CFG-PAC asserted that it does
8 not know in advance for whom it is going to make independent expenditures or contributions or
9 in what amounts until the decision to make an expenditure or contribution is made. CFG-PAC
10 Resp. at 5 and Keating Aff. ¶10. Accordingly, CFG-PAC stated, it was not in a position to
11 inform contributors how CFG-PAC’s funds would be spent. *Id.* CFG-PAC then argued that the
12 solicitation attached to the complaint does not inform contributors how their contributions to
13 CFG-PAC will be used; rather, the solicitation “vividly separates its pitch for Club [for Growth]
14 PAC from the solicitations for the candidates, discussing candidates in general terms in the PAC
15 section of the joint solicitation.” CFG-PAC Resp. at 5 and Keating Aff. ¶12. As for the Toomey
16 e-mail attached to the complaint, CFG-PAC asserted that its date of August 9, 2006, the day after
17 the Michigan primary election between Walberg and Schwarz, indicates that it was not received
18 by contributors until the pertinent election was over and could not have informed contributors to
19 CFG-PAC as to the PAC’s use of funds for the Walberg campaign before this date. CFG-PAC
20 Resp at 6.

21 Finally, WFC responded with an affidavit by Joseph Wicks, WFC campaign manager, in
22 which he avers that WFC received earmarked contributions from CFG-PAC, but such

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1 contributions were the result of the unilateral efforts of CFG-PAC. Wicks Aff. ¶4. Further,
2 Wicks states that WFC did not know that any portion of contributions received by CFG-PAC
3 would be used to support WFC. *Id.* at ¶5.

4 The Commission has required that the contributor have "actual knowledge" of the
5 committee's plans to use his or her contribution to contribute to or expend funds on behalf of the
6 candidate to meet the requirements of section 110.1(h)(2). See MURs 5732 (Matt Brown for
7 U.S. Senate), 5678 (Liffrig for Senate) and 5019 (Keystone Federal PAC) (although contributors
8 were likely aware that the PAC would contemporaneously contribute to the candidates'
9 committees, it does not appear that the contributors knew that a portion of their own
10 contributions would be given to specific candidates).¹¹

11 Although the complaint in this matter alleges excessive contributions on a massive scale,
12 \$540,726 from some 250 contributors who gave to both CFG-PAC and WFC, the available
13 information does not suggest that donors had actual knowledge that CFG-PAC would expend a
14 substantial portion of their contributions on behalf of WFC. The single CFG-PAC solicitation
15 provided does not state either directly or indirectly that contributions to CFG-PAC will be used
16 to support WFC. The only way contributors are told how they can help support WFC is by

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1 writing checks to WFC and sending those checks to CFG-PAC. Although a contributor might
2 reasonably infer from the solicitation as a whole that some portion of his or her contribution to
3 CFG-PAC might be used to support WFC, such an inference alone does not suggest that the
4 contributors had “actual knowledge” that CFG-PAC would use their contributions to support
5 WFC.¹²

6 As for the Toomey e-mail, although it claims that Walberg’s primary election victory
7 resulted in part from CFG-PAC’s independent expenditures (“over \$500,000”) and that CFG-
8 PAC used its contributors’ funds to support Walberg, this information does not indicate that
9 CFG-PAC informed its contributors *at the time they made their contributions* that their
10 contributions would be used to support Walberg.¹³ See 11 C.F.R. § 110.1(h)(2). Moreover, six
11 individual contributor respondents have provided affidavits specifying that they did not know
12 that CFG-PAC would use their funds to support WFC. CFG-PAC similarly denied, in a sworn
13 statement from CFG’s executive director, providing any such knowledge to contributors.

14 Further, there is no correlation between the timing of contributions to CFG-PAC and
15 CFG-PAC’s expenditures on behalf of, or contributions to, WFC. The seven individual
16 respondent contributors gave to CFG-PAC at various times between January 30 and August 11,

¹² Even the complaint in this matter describes CFG-PAC’s solicitations, such as the one attached to the complaint, as “*implying* that contributions to CFG-PAC would also be used to support the endorsed candidates and/or oppose their opponents ” Complaint ¶7 [emphasis added]

¹³ The complainant’s assertion that earmarked contributions made through CFG-PAC constituted 86% of WFC’s support does not indicate what individual contributors to CFG-PAC knew regarding CFG-PAC’s intended use of their contributions

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2006, as set forth in the chart below, but CFG-PAC made the vast majority of its independent expenditures in support of Walberg or in opposition to Schwarz in July and August 2006.¹⁴

<u>Contributor</u>	<u>Date</u>	<u>Amount</u>
Bent, Bruce	4/20/06	\$5,000
Lansing, Robert	3/06/06	\$ 500
Lansing, Robert	4/03/06	\$2,000
Lansing, Robert	7/25/06	\$1,000
Lansing, Robert	8/11/06	\$1,500
MacNeil, David	6/26/06	\$5,000
Manheimer, Virginia	5/30/06	\$5,000
Weindling, Lester	1/30/06	\$2,500
Weindling, Lester	3/01/06	\$2,500
Wolf, William	4/10/06	\$5,000
Wolfe, Betty	2/23/06	\$2,000
Wolfe, Betty	3/24/06	\$1,500
Wolfe, Betty	6/01/06	\$1,500

Moreover, CFG-PAC did not contribute to WFC until June 2006.

In sum, based on the available information, it does not appear that the individual contributors made their contributions to CFG-PAC with the requisite knowledge, as set forth in section 110.1(h)(2), to trigger a violation of 2 U.S.C. § 441a(a). Neither is there information suggesting that the individual contributors retained control over their contributions once they were in CFG-PAC's possession. *See* 11 C.F.R. § 110.1(h)(3). Accordingly, the Commission finds no reason to believe that the seven named individual contributors violated 2 U.S.C. § 441a(a) or that CFG-PAC or WFC knowingly received excessive contributions in violation of 2 U.S.C. § 441a(f).

¹⁴ CFG-PAC disclosed contributions to WFC totaling \$3,250, all during June 2006. Of CFG-PAC's total \$182,472 in independent expenditures in support of Walberg and \$326,994 in opposition to Representative Schwarz, the vast majority were in July and August 2006. The only independent expenditures CFG-PAC disclosed making in early 2006 in connection with Walberg or Schwarz were dated February 16 and totaled only \$6,210.

1 C. Club for Growth, Inc.

2 The complaint identifies Club for Growth, Inc. together with CFG-PAC as endorsing
3 candidates, soliciting contributions for candidates and sending the Toomey e-mail. Complaint at
4 ¶¶ 4, 7 and 9. As noted, the solicitation and the Toomey e-mail each contain a disclaimer that it
5 was paid for by CFG-PAC. The complaint does not allege, and available information does not
6 suggest, particular violations of the Act on the part of Club for Growth, Inc. Accordingly, the
7 Commission finds no reason to believe that Citizens Club for Growth, Inc. violated the Act in
8 connection with this matter.

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